

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

Docket No. 17-161

6 JAMES FRANCIS GORMAN,

San Juan, Puerto Rico

October 31, 2018

7 Defendant.

8  
9 REVOCATION HEARING

10 BEFORE THE HONORABLE JUDGE AIDA M. DELGADO COLON,

11 UNITED STATES DISTRICT JUDGE.

12  
13 APPEARANCES:

14 For the Government: Ms. Elba Gorbea Padro, AUSA

15  
16 For the Defendant: Mr. Jesus Hernandez Garcia, AFPD

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23  
24 Proceedings recorded by stenography. Transcript produced by  
25 CAT.

I N D E X

WITNESSES:

PAGE

None offered.

EXHIBITS:

None offered.

San Juan, Puerto Rico

October 31, 2018

At or about 1:54 PM

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COURTROOM DEPUTY: Criminal case 17-161, *United States of America versus James Francis Gorman*. Case called for revocation of supervised release. Appearing on behalf of the United States, Assistant U.S. Attorney Elba Gorbea. Appearing on behalf of the defendant, Assistant Federal Public Defender Jesus Hernandez.

The defendant is present in court and will not require the services of the court interpreter.

MS. GORBEA PADRO: Good afternoon, Your Honor. AUSA Gorbea on behalf of the United States. The government is ready to proceed.

MR. HERNANDEZ GARCIA: Good afternoon, Your Honor. Jesus Hernandez on behalf of Mr. James Gorman. We're also ready to proceed.

THE COURT: Okay. So we are here for a final revocation in essence. There are several motions in the case filed at docket 55, in June of 2018.

Technically, the probation officer reported that on June the 1st of 2018, the defendant had to relocate from his residence allegedly due to fear of being attacked by a former employee. He did so against the advice -- in essence, that he

1 reported via e-mail he was on the move and unable to stay in  
2 one place, but he failed to report the address he was staying.  
3 And the probation officer reports this to -- the violation of  
4 the conditions of release, and also a SORNA violation of  
5 course because of the registration requirement.

6 Then on June the 1st of 2018, he was scheduled to  
7 report to the office no later than 5:30 PM. He failed to  
8 report.

9 There's a subsequent notification filed by the  
10 probation officer, and it's at docket 61. In essence, there's  
11 information, of course, that on June 12 of 2018, he was  
12 instructed to report to the Probation Office the following  
13 day. And he was instructed to provide the address where he  
14 was staying, but he declined to do it. And failed to report  
15 in violation of his conditions of supervised release that on  
16 12-24-2014, the defendant was arrested in New York by the  
17 Marshal Service.

18 According to the report, at the time of arrest, he  
19 was in possession of a Social Security card under the name of  
20 Rolando Diaz Rodriguez, and had an ID with his picture with  
21 the name Yimmie Perez Diaz on it.

22 It's my understanding that no charges have been filed  
23 for those -- for that factual scenario, reason for which we  
24 are talking technical violations, of course with the failure  
25 to register being included.

1           There was a preliminary revocation hearing. Probable  
2       cause was determined as to all allegations of the probation  
3       officer. And it remains to be mentioned that the probation  
4       officer was extensively questioned at the hearing in which he  
5       testified.

6           So what is the position of this defendant at this  
7       juncture?

8           MR. HERNANDEZ GARCIA: Your Honor, on behalf of  
9       Mr. Gorman, at this juncture, Your Honor, we will not be  
10      challenging the allegations in the motion. We will be arguing  
11      for mitigation.

12           THE COURT: Go ahead.

13           MR. HERNANDEZ GARCIA: Your Honor, a review of the  
14      PSR in this case will tell you what kind of person Mr. Gorman  
15      is. I think we have to understand who he is and his  
16      background to give context to his conduct in this case.

17           His conduct in this case, there's no controversy that  
18      he fled Puerto Rico because of death threats, Your Honor.  
19      These death threats were communicated to the Probation Office,  
20      and I believe the Probation Office corroborated Mr. Gorman's  
21      version with his girlfriend, and also a police report that was  
22      filed.

23           So his fleeing from the country was because of  
24      credible death threats. Yes, it's a violation, Your Honor,  
25      but that's the context of his leaving the island.

1           Now, Mr. Gorman, Your Honor, when I reviewed the PSR,  
2 I noticed his upbringing. He hasn't had great parents. He  
3 moved around foster care. His grandparents turned him over to  
4 foster care when he was 15. He's moved around to different  
5 states growing up. He's been hospitalized because of mental  
6 illness, Your Honor, which includes bipolar disorder, PTSD,  
7 hyperactivity, major depression. And although some of these  
8 conditions do not exist currently, when you speak to  
9 Mr. Gorman, he does still battle some of these issues on a  
10 daily basis.

11           He's very functional. He does work. He was a  
12 fisherman most of his adult life, Your Honor. But he was also  
13 homeless a lot of periods of his life, Your Honor. In fact,  
14 when he was -- in the PSR, page two, his address was homeless.  
15 And when he was arrested in New York in July of this year, he  
16 was actually arrested at a homeless shelter in New York. And  
17 that's because he doesn't have a family base to lean on, Your  
18 Honor.

19           He doesn't have any contact with his family members.  
20 And why would he? You know, these are members who abandoned  
21 him when he was growing up.

22           However, we have identified one gentleman in New York  
23 City who is a lifelong friend, who is willing to provide his  
24 residence as a permanent address where Mr. Gorman can live or  
25 reside. And I think that's a big issue in this case, Your

1 Honor, because once Mr. Gorman is released, he has to go  
2 somewhere. He has to live somewhere.

3 Our solution would be to allow him to transfer to New  
4 York City, because in Puerto Rico, he has no family members.  
5 He's not from here. He grew up in the United States. He came  
6 down here in 2016 to work with FEMA, but there is no real  
7 connection to the island.

8 Excuse me, Your Honor. He came -- correction, Your  
9 Honor. He came down here as a fisherman in 2016. But there  
10 is no -- there is no --

11 THE COURT: So he came in 2016 as a fisherman or to  
12 work with FEMA?

13 MR. HERNANDEZ GARCIA: As a fisherman, Your Honor, in  
14 2016. And so he stayed. But there's no real connection to  
15 the island, Your Honor. If he was released today, he would  
16 have nowhere to go. He would be homeless again. There are no  
17 family members to lean on in the States except this friend  
18 that we have identified.

19 Actually, we've given the name of the person, the  
20 address and the phone number to the probation officer. We  
21 gave the information to him a couple months ago so he could  
22 corroborate the information we gave him.

23 The revocation proceeding has to be resolved in order  
24 to -- the proceedings in this case. He notified --

25 THE COURT: I'm sorry.

1           MR. HERNANDEZ GARCIA: He fled because he was under  
2 death threats, and this was communicated to his probation  
3 officer at the time via e-mail, Your Honor.

4           THE COURT: And the probation officer gave him  
5 instructions what to do and how to report, and he failed to  
6 comply.

7           MR. HERNANDEZ GARCIA: That's true, Your Honor. But  
8 in the context of credible death threats in Puerto Rico, Your  
9 Honor --

10          THE COURT: Who was threatening him?

11          MR. HERNANDEZ GARCIA: Our information is an  
12 ex-associate.

13          THE COURT: Two employees that he had that he never  
14 paid salaries, if at all? If those were threats, maybe they  
15 were trying to claim their monies because the defendant never  
16 paid them -- and I'm not justifying the actions of these  
17 individuals, but what he calls threats could be collection  
18 actions by these individuals, not threats being made because  
19 your client -- as far as I know, from the probation officer,  
20 also received the help of another woman who worked in FEMA in  
21 California, and then he began using her and demanding money  
22 from her.

23          MR. HERNANDEZ GARCIA: Your Honor, during his  
24 allocution, he's going to explain in detail. All I have is  
25 the information I read in the e-mail. But the concerns that



1 the Court has --

2 THE COURT: I can understand that. And right now  
3 your client is technically talking to you and telling you  
4 arguments and things to rephrase or to do. I don't know what  
5 instructions he's giving you, but in essence the information  
6 that I received from the probation officer talks about an  
7 individual that keeps manipulating those that even out of good  
8 will, this woman, having approached him and tried to help him.  
9 So this is a very different scenario.

10 And I'd rather have someone here that comes and tells  
11 me the truth than having someone who tries to manipulate the  
12 Court. And this is what I see from this defendant.

13 MR. HERNANDEZ GARCIA: One moment, Your Honor. Yes,  
14 Your Honor.

15 THE COURT: Give me two seconds.

16 (Discussion held off the record with the probation  
17 officer and the Court.)

18 THE COURT: I'll hear from you, Counsel.

19 MR. HERNANDEZ GARCIA: Yes, Your Honor. In terms of  
20 the interpretation of what happened, I can only inform the  
21 Court what has been told to me of course, Your Honor. There  
22 was communication, however, and that's an important factor.  
23 Whether he followed the instructions, I think we're not  
24 challenging that violation, Your Honor.

25 And I know there was communication after he left the

1 island. He was brought back in late July, Your Honor. He's  
2 been detained since. And I just want to discuss the life he's  
3 been living behind bars so far at MDC, Your Honor.

4           There has been some issues with the food he's  
5 receiving. My client is Jewish, Your Honor. He does require  
6 a kosher meal. That wasn't being complied with. In fact,  
7 there were times he was given expired food. There were some  
8 instances where my client failed to eat as discrimination  
9 because of his religion. And we brought these issues to the  
10 attention of the legal department at MDC. He made strides to  
11 better his conditions there, but that's the way he's been  
12 living these past months at MDC, Your Honor.

13           So when you look at his background, Your Honor, which  
14 is in the PSR, that's a fact. And his conduct here, I think  
15 if a plan -- I'm not asking the Court to treat him  
16 preferentially, Your Honor, but you have to understand  
17 sometimes his conduct is a reaction based on his mental  
18 conditions, Your Honor.

19           However, I've spoken to Mr. Gorman since he's been in  
20 Puerto Rico. He does want to make a commitment to follow the  
21 conditions of supervision, Your Honor. His main concern, his  
22 main and his principal concern is to relocate to the United  
23 States, to the mainland, Your Honor, to serve his supervision  
24 over there and to continue fishing, because that's his main  
25 source of income, Your Honor.

1           Given the sort of facts, Your Honor, given his  
2 background, Your Honor, I think it's time -- for the  
3 violations he's committed, no -- incarceration would do no  
4 good for him, Your Honor. Our request would be to consider a  
5 sentence of time served, Your Honor. Consider moving him into  
6 the halfway house in Puerto Rico until a transfer or  
7 relocation can be done to the mainland, Your Honor. And that  
8 would be our request, Your Honor.

9           THE COURT: Okay. There was a time after the  
10 defendant relocated in which he remained absconded until  
11 arrested in New York or found in New York.

12           Can the probation officer state, for purposes of the  
13 record, the information that you have gathered concerning  
14 whether this defendant ever filed a complaint for those  
15 threats that he alleges to have received and what is the  
16 information that you have been able to receive?

17           PROBATION OFFICER: Guillermo Arbona for the record.

18           The information that we have received is that  
19 personally Mr. Gorman did not file any complaints. However,  
20 we do know that his consensual partner, Ms. Maria Samoa, she  
21 filed a complaint, because allegedly two of the individuals  
22 that were threatening Mr. Gorman tried to ask for some money  
23 from her. And she decided to file the complaint.

24           But Mr. Gorman, he was in Puerto Rico. He did not  
25 report to the police or make any complaints regarding the

1 | allegations, Your Honor.

2 |           THE COURT: Okay. Any evidence indicating that the  
3 | threats against this defendant were real?

4 |           PROBATION OFFICER: Your Honor, we spoke with the two  
5 | individuals that allegedly tried to engage in violent conduct  
6 | against Mr. Gorman, and both of them give us different  
7 | versions of the situation. They say that Mr. Gorman was  
8 | supposed to pay them money for the job they did working for  
9 | him. That he was subcontracted by FEMA, but he failed to pay  
10 | them. And they were trying to receive the money that they  
11 | earned working for him.

12 |           And both assured not making any death threats against  
13 | Mr. Gorman.

14 |           THE COURT: Okay. And the information about this  
15 | woman who tried to help him and was the reason why he secured  
16 | the job with FEMA, and that later on the defendant was  
17 | attempting to get monies from her?

18 |           PROBATION OFFICER: Yes. Initially she was willing  
19 | to help Mr. Gorman, and she was doing so in addition to  
20 | helping him get the job with FEMA. And -- but later she  
21 | understood that Mr. Gorman was taking advantage of her by  
22 | constantly asking for money from her, and it got to a point  
23 | that she thought that Mr. Gorman was doing so to take  
24 | advantage of her.

25 |           And she stopped sending him money because he was

1 making also promises that he was going to report to Puerto  
2 Rico, that he was going to surrender, and that he was going to  
3 face the authorities, and asking money from her to pay for the  
4 air ticket. But he failed to comply and use the money for the  
5 things that he was promising her, so she stopped communicating  
6 with Mr. Gorman and she stopped sending him money.

7 THE COURT: Very well. Thank you.

8 PROBATION OFFICER: You're welcome.

9 THE COURT: So addressing myself to the defendant.  
10 Sir, there's information on the record. Probable cause has  
11 been determined, and no other evidence to the contrary has  
12 been presented to the effect that you have violated the  
13 conditions of supervised release as alleged by the probation  
14 officer.

15 So is there anything you'd like to state and that I  
16 should consider before sentencing you?

17 THE DEFENDANT: Yes. Good afternoon, Your Honor.

18 THE COURT: Good afternoon.

19 THE DEFENDANT: The two individuals that were working  
20 for me -- I started with HUD. And I got asked to move over to  
21 a program called Tu Hogar Renace. My position with HUD was to  
22 do inspections on foreclosed properties by the Federal  
23 Government.

24 In the first few months -- if you can remember, at  
25 the beginning of the year, there were a lot of alleged

1 | misconducts by a couple companies, of people going to houses,  
2 | doing shabby work. My function with the company, the  
3 | subcontracting company for FEMA, Patriot, was to go to the  
4 | homes, inspect the homes, and to decide if the people should  
5 | get paid for it.

6 |           Now, I have two of my own employees: One, Adrian  
7 | Torres, and the other Shawn something. I don't remember at  
8 | this time, Your Honor. I apologize. They went to a house in  
9 | Ciales, Puerto Rico. They replaced the window, and then they  
10 | took the window back down, took it back to Home Depot and  
11 | turned the receipt in to Patriot.

12 |           And this was brought to my attention, so I went  
13 | through all their receipts going back months. And in the  
14 | process of going back, I discovered what they were doing is  
15 | they would go to a home, they would do what they call a  
16 | reorder, because anything by the government that was changed  
17 | that was not by FEMA or Tu Hogar Renace, you have to do a  
18 | reorder so the government can reimburse the company. They  
19 | would do a reorder, pay out of pocket, take the stuff down,  
20 | put the old stuff back up, and tell them they didn't qualify  
21 | for it and take it back to Home Depot.

22 |           And it wasn't a lot of money. We're talking 40  
23 | dollars here, 20 dollars there. If you go to the place, I'm  
24 | sure you're familiar with the island, Ciales, it's a hike and  
25 | there's nothing up there. So they've been instructed to

1 install three smoke detectors, and they only have two that  
2 day. They go to the store, buy one, get an itemized receipt  
3 saying they bought this. Well, they're turning in receipts  
4 for universal remote controls. Everybody that I work under  
5 there, everybody's from the United States. They don't speak  
6 Spanish. They don't know anybody. My Spanish is getting  
7 better, and I go to these places.

8 I went to a spot in Bayamon across from Adrian  
9 Torres' house, where it says that he bought a universal  
10 remote. No. It's just because they didn't have it written  
11 down right. Well, I went in there and there is no remote  
12 anywhere. I made a decision not to pay them their full  
13 amount.

14 They received, both received sub amounts, plus loans,  
15 draws, a daily draw of cash out of my own personal pocket,  
16 because they were subcontracted, you know, at-will employees.  
17 You know, they're not subcontracted by the government.  
18 They're subcontracted by me. I can terminate their employment  
19 at any time, and I told them that.

20 And I said -- you know, they make a lot of money.  
21 They get 600 dollars per house. All they're doing is going in  
22 and putting up a couple fire alarms, carbon monoxide detector,  
23 the windows, openers for the Miami windows. It's not a lot of  
24 stuff. The stuff they're putting up doesn't even cost the six  
25 hundred dollars, you know.

1           It's abuse, and I called them on it. And, you know,  
2 I contacted my probation officer in May about this, not June,  
3 because I did report this. I reported it to the police  
4 department, and they said, man, we really can't do anything  
5 unless the people want to press charges, which nobody really  
6 wanted to get involved in it. They just want their stuff  
7 fixed.

8           There was an instance where Shawn, his job was to  
9 deal with roofs. He went to a house in Ciales, to people who  
10 went four months in one room, and he washed their roof and  
11 then he sealed it the same day, right after the other. The  
12 whole house is ruined. Now you have to sand blast the roof.

13           And the Americans that are in charge of this are  
14 telling me, hey, why are you letting this team do this. You  
15 have to hold them accountable. If Matt Vargo (ph) was here  
16 from Patriot today, he would say the same thing.

17           There are a lot of instances where people are abusing  
18 people. You know, they didn't have anything. I didn't grow  
19 up with much. And I'm not going to say I paid them. I didn't  
20 pay them. The Court is absolutely right. I did not pay them  
21 one penny, nor would I today.

22           And I went to the United States. I spoke with the  
23 CEO in Texas, Matt Vargo, as well as the CEO here, and I told  
24 them, don't pay them. They go up to the house and talk to  
25 people. They went up to the houses apparently months after



1 | this happened. And they don't work anymore, as far as I know.  
2 | As far as Marie Samora (ph) goes -- you know, they threatened  
3 | my life.

4 |           When somebody threatens me, especially a place in  
5 | Puerto Rico where it can be dangerous, and especially someone  
6 | from the projects, I'm going to take it serious. And I  
7 | contacted Mr. Guillermo Aborna in May. He wasn't here. He  
8 | was in Spain. So the best thing I could do was I contacted my  
9 | first agent, Nelson Mendoza. And I called him at eight  
10 | o'clock at night and explained the situation. He said, you  
11 | need to put it all in writing and send it to Mr. Aborna.

12 |           I didn't hear from them for days. It wasn't right  
13 | away. This was days I didn't hear from them. It's not like I  
14 | sent it on a Friday, you know. I didn't hear from them in  
15 | days. And to be completely honest with the Court, by the time  
16 | they contacted me, I was already gone. And it's just the  
17 | truth. And I didn't know what to do.

18 |           I don't know a lot of people on this island, and I  
19 | just -- I did wrong. And I understand that. I would just  
20 | like the Court's understanding of the situation.

21 |           And I'm being open about the whole -- the Adrian  
22 | Torres thing. I mean, what's right is right. What's wrong is  
23 | wrong. And people don't have much on the island right now. I  
24 | mean, I met a lot of people with no roof at all --

25 |           THE COURT: That's not the issue.

1 THE DEFENDANT: I know. I'm saying I have to take  
2 into account everybody, and I don't think somebody deserves to  
3 get paid if they're stealing, you know.

4 THE COURT: I'm not getting involved in that.

5 THE DEFENDANT: Okay.

6 THE COURT: You had mechanisms under the law to  
7 report a threat. There were other officers at the probation  
8 office if Mr. Aborna was not there.

9 THE DEFENDANT: And I notified Nelson Mendoza. I  
10 called him four times before he was able to answer. It was  
11 like seven, eight o'clock at night. You know what I'm saying?

12 THE COURT: Okay.

13 THE DEFENDANT: And I spoke with him and explained  
14 the situation.

15 THE COURT: Okay.

16 THE DEFENDANT: He said, write a letter in detail.  
17 Explain everything you just told me. And I did that. I  
18 believe we might have that here. I did the best -- I'm just  
19 not good with everything sometimes, and especially when  
20 somebody's threatening my life.

21 Maria and I, I still talk to her every day. She came  
22 to see me the other day while she was here. I don't know  
23 where the -- I'm not going to speak on Mr. Aborna's version of  
24 the events, but I don't believe that's the way it was at all.  
25 She didn't pay for my ticket. I used a buddy pass to go to

1 the United States from a friend of mine from the United  
2 States.

3 And she did in fact send me money a couple of times.  
4 And I never said that I was going to fly back to Puerto Rico.  
5 In fact, Your Honor, I had spoken with my attorney, Laurie  
6 Galafino (ph) in New York City, who has multiple times tried  
7 to speak with probation. And -- if he's willing to plead  
8 guilty up here, why can't we keep him in New York? He already  
9 has an address here. He doesn't speak the language. He's  
10 already here. He wants to stay in the States. Let's see if  
11 we can facilitate that. And they said, absolutely not.

12 THE COURT: That your attorney doesn't speak what  
13 language?

14 THE DEFENDANT: That I don't speak Spanish  
15 completely. Spanish.

16 THE COURT: You can speak in English to the probation  
17 officer.

18 THE DEFENDANT: I'm talking about living in Puerto  
19 Rico. I was already arrested, Your Honor. I was already at  
20 MDC Brooklyn. So she communicated, if he's trying to relocate  
21 here and stay here, let's start this process now when he's  
22 here. And he wasn't trying to hear that.

23 And that wasn't just from him. I believe he received  
24 a couple calls from the U.S. Marshal Service, as well as other  
25 agencies. And, you know, I'm sorry. I can assure you that if

1 | you let me go home, back to the United States, that I'll stay  
2 | committed to doing the right thing.

3 |           I got a job 24 hours after I got out when I got to  
4 | the island, and I didn't even have a place to live at. And  
5 | within two weeks, I went from living in the place in Caguas to  
6 | living in Isle Verde. And you know, I believe it speaks to a  
7 | little bit of my -- I don't know what the word is --  
8 | dedication to try to do what's right. And more so, Your  
9 | Honor, I wish for a living -- I live in the United States.

10 |           I'm a good fisherman. I have a job waiting for me in  
11 | Montauk, New York, which is not too far from New York City. I  
12 | have an address in New York City. And here I'm told from the  
13 | first agent, you know, get ready, go fishing. Just get all  
14 | the stuff you need. And when it changed to the next agent, he  
15 | told me I wasn't allowed to go outside 15 miles of the state  
16 | waters.

17 |           And I'm a commercial fisherman. I fish on federal  
18 | permits inside of federal waters. And that's neither here nor  
19 | there. I'm just speaking to the context of what I do for a  
20 | living and how I provide for -- I have a daughter, you know.  
21 | I'm not the greatest dad in the world, but I do help.

22 |           She lives in Texas, not California. And, you know, I  
23 | help. I just don't have a lot of communication just because  
24 | she's young, and right now it's more important to worry about  
25 | school than worry about her dad who left when she was six,

1 | because I was an immature person.

2 |           And I'm just trying to get home and see my family. I  
3 | have some family. It's not much, but I don't have anybody  
4 | here. And I'd just like to ask Your Honor to at least let me  
5 | get home and show the Court that I can comply and do  
6 | everything else that I did.

7 |           I didn't have any dirty urine samples. I complied  
8 | with the mental health evaluation. I complied with the drug  
9 | evaluation. I passed both of those, Your Honor. Wasn't  
10 | required to go back to either of those.

11 |           I would just like, you know, an opportunity to show  
12 | you my commitment, Your Honor. Thank you. I have nothing  
13 | else to say.

14 |           THE COURT: Very well. I'll hear from the  
15 | government.

16 |           MS. GORBEA PADRO: Your Honor, the government moves  
17 | for the revocation of defendant's supervised release and that  
18 | he be sentenced to the maximum statutory term of 24 months.  
19 | This defendant has clearly shown no respect for the law. He  
20 | wants to do things his way or no way at all. He has  
21 | demonstrated poor judgment along the way, and his modus  
22 | operandi has been taking advantage of people and wanting to  
23 | take advantage of the system.

24 |           He's unable to follow instructions, Your Honor. And  
25 | he's coming before this Court today not to admit his

1 | wrongdoings and his failure to comply with his conditions of  
2 | supervised release, but to give excuses and more excuses.

3 |         He's saying now before this Court there is a job  
4 | waiting for him. Well, he should have done the right thing  
5 | and he should have complied with the conditions of supervised  
6 | release. Yet he's saying that there is a job waiting for him.  
7 | But he informed the probation officer that he had to be on the  
8 | move and unable to stay in one place.

9 |         So we really don't understand what is really going on  
10 | with this defendant, Your Honor. If we go back to the  
11 | beginning, after he was originally charged with sexually  
12 | assaulting a minor, one of his conditions was that he had to  
13 | register the place and address of residence whenever he was  
14 | moving, or his job, address, et cetera.

15 |         He moved to Puerto Rico, and he did not comply with  
16 | that first requirement. Then, back in June of this year, he  
17 | was -- the defendant reported that he had to relocate because  
18 | of fear of being attacked by these individuals. And he  
19 | reported to the probation officer that he had to be on the  
20 | move and unable to stay in one place. And he failed back then  
21 | to report his address of residence to the probation officer,  
22 | which was one of his conditions of his supervised release, and  
23 | one of the conditions under SORNA.

24 |         On that same day, on June 1st, 2018, he was  
25 | instructed to report to the Probation Office, but he also

1 failed to do so. Then, in August of this year, another motion  
2 by the probation officer was filed that he once again failed  
3 to -- he was instructed to provide the address where he was  
4 staying, but he declined to do it. And he failed to report to  
5 the probation officer.

6 So, Your Honor, this is an individual who does not  
7 want to comply with the conditions, who does not want to  
8 report where he's at, who now he's saying that there's family  
9 waiting for him, but then again, he says that he's homeless,  
10 that he has no family.

11 So in essence, what the government is seeing is a  
12 very unstable individual who does not want to comply with the  
13 conditions of his supervised release, and he just wants to be  
14 on the run, on the run doing whatever he wants to do, which is  
15 making the wrong decisions, the wrong, bad judgments.

16 So Your Honor, this revocation, this revocation  
17 should be -- his conditions of supervised release should be  
18 revoked, and he should be sentenced to a term of 24 months.  
19 That is the government's position.

20 MR. HERNANDEZ GARCIA: Your Honor, if I may reply  
21 briefly?

22 Your Honor, I heard sister counsel make her  
23 arguments, and I would argue that everything she just said is  
24 in favor of supervision, is in favor of the Probation Office  
25 getting deeper into the supervision with Mr. Gorman.

1           It's -- there's no -- there's no controversy that  
2 he's homeless. There's no controversy that he doesn't have a  
3 strong family background or support system. The threats in  
4 this case, there is no controversy to the extent that when the  
5 Probation Office interviewed the girlfriend, she confirmed  
6 that there were two guys asking for money to the extent she  
7 felt threatened herself and she filed a complaint.

8           And Your Honor, you heard him. You heard Mr. Gorman  
9 today. He's remorseful. He wants to comply. His re --  
10 issues are relocating to the States, and the months that he  
11 was on supervision prior to leaving, he did so in a -- he  
12 complied basically. His violations in this case are because  
13 of particular circumstances that have been substantiated, Your  
14 Honor. They've been memorialized. And there's no  
15 controversy. That's the only reason we're here today, Your  
16 Honor, because of what he did back in June.

17           However, he stated to you just now, Your Honor, that  
18 he's committed to his supervision. He's committed to working  
19 with the Probation Office. And the only reason he left was  
20 because of these particular circumstances, Your Honor, because  
21 of this case and these particular circumstances, Your Honor.

22           And we cannot forget Mr. Gorman's background, Your  
23 Honor. A sentence of 24 months just won't -- it will not be  
24 justified, Your Honor. That's all we have to say.

25           MS. GORBEA PADRO: The government disagrees. If this



1 defendant would have complied, there wouldn't have been two  
2 motions filed by the probation officer notifying violations of  
3 his supervised release.

4 THE COURT: Okay.

5 MR. HERNANDEZ GARCIA: I don't understand the  
6 argument.

7 THE COURT: One thing is clear here. The defendant  
8 has not complied with the conditions of supervised release as  
9 per motion of the probation officer. He has failed to report  
10 as instructed, to remain at the same address. Regardless, he  
11 has failed to follow the procedures that had been explained to  
12 him.

13 Even if he needed help or protection, he is well  
14 aware as well to -- even to relocate or transfer supervision,  
15 there's a process as well. It's not that the Court can come  
16 here and Order from now on he will be supervised in New York.  
17 There needs to be a request, and the District of New York  
18 needs to accept supervision.

19 It is also clear that this defendant may have mental  
20 conditions for which he needs treatment, and he's not  
21 receiving it. But, as well, there's evidence pointing to the  
22 fact that he tends to manipulate the system.

23 He has been lucky enough not to be charged with  
24 illegal possession of identification documents under two  
25 different names, which is separate violations, and had the

1 evidence been presented, would have been conduct that amounts  
2 to probably a felony offense, but would have increased the  
3 grade violation significantly, having the exposure of this  
4 defendant increased as well.

5 I think that listening to the defendant, I have to  
6 agree with the government. He keeps giving excuses. Though  
7 he says sorry, there's always an explanation and a scenario  
8 under which he puts and portrays things that have happened.  
9 But certainly the violations do stand. He has failed to  
10 register as well, which is a serious violation.

11 Sentencing the defendant to the maximum statutory  
12 penalty with no supervised release actually would be to just  
13 leave the defendant out there on his own and maybe not  
14 providing a good opportunity for rehabilitation. So I'll just  
15 impose -- a sentence that will reflect the seriousness of the  
16 offense would be at the higher end of the guidelines, but I  
17 will keep this defendant under supervision.

18 I find that he and the community as well are in need  
19 of those conditions of supervision, and both will benefit.  
20 Defendant by receiving assistance that he needs for his  
21 rehabilitation, and the community will be protected from any  
22 further harm that could be caused by this defendant. And the  
23 defendant will have to register as required.

24 After having heard the parties in the case, the Court  
25 finds that Mr. James Francis Gorman has violated the

1 conditions of supervised release term by failing to comply  
2 with the conditions of supervised release that he was -- of  
3 the Sex Offender Registry and Notification Act, moving to an  
4 unapproved place, failing to notify new address to the  
5 probation officer, failing to report as instructed, and  
6 leaving the jurisdiction without authorization, and absconding  
7 after a warrant for arrest had been issued and awaiting for  
8 him to be arrested.

9           Accordingly, then the supervised release term imposed  
10 on September the 20th, 2017, is revoked. To impose sentence,  
11 I have considered Chapter Seven policy statements, including  
12 revocation of supervised release, and the dispositions under  
13 Section 7(B)(1.1)(a)(3). A grade C violation has been  
14 determined.

15           Based on a Criminal History Category of III, and a  
16 grade C violation, the Guideline Imprisonment Range is from  
17 five to 11 months pursuant to Sentencing Guideline Section  
18 7(B)(1.4)(A). Pursuant to 3583(E)(3), upon revocation of  
19 supervised release, the Court may impose a sentence of  
20 supervised release for not more than two years since the  
21 original case at bar is a class C felony.

22           Mr. Gorman, has shown disregard complying with  
23 conditions imposed by the Court and also has failed to adhere  
24 to the supervision plan. The efforts made by the probation  
25 officer to assist him in compliance and provide some structure

1 have been fruitless. And therefore, the Court will consider  
2 the factors under Section 3553(a)(1)(2)(B)(C), and the nature  
3 and the circumstances and the financial scenario described  
4 herein, and the violations in which the defendant has  
5 incurred.

6           Considering all of that, the Court concludes that a  
7 sentence at the higher end of the guideline range is  
8 sufficient but not greater than necessary in this case. The  
9 defendant -- I'm asking counsel to, after the judgment, to  
10 explain what this means to the defendant.

11           I will keep him on supervised release for a  
12 significant period. And if you keep violating the conditions  
13 of release, the request from the government for two years  
14 prison sentence can come any time.

15           So according to the judgment of the Court, Mr. Gorman  
16 is hereby committed to the custody of the Bureau of Prisons  
17 for 11 months. Upon release from confinement, he will serve  
18 eight years of supervised release under the following  
19 conditions.

20           The defendant must comply with the standard  
21 conditions that have been adopted by the court. He shall  
22 participate in an approved substance abuse monitoring and/or  
23 treatment services program.

24           The defendant shall refrain from unlawful use of  
25 controlled substances and submit to a drug test within 15 days

1 of release. Thereafter, submit to random drug testing. No  
2 less than three samples during the supervision period, and not  
3 to exceed 104 samples per year in accordance with the Drug  
4 Aftercare Program Policy of the Probation Office as approved  
5 by the Court.

6 If necessary, treatment will be arranged by the  
7 probation officer in consultation with the treatment provider.  
8 The defendant is required to contribute to the cost of  
9 services rendered in an amount arranged by the probation  
10 officer based on ability to pay or availability of third party  
11 payment.

12 Defendant shall not have contact with the victim of  
13 the prior sex offense and shall not engage in communication  
14 with the victim through mail, letters, telephone, computer,  
15 electronic devices, or third parties. The only exception  
16 relies in the incidental contact in normal commercial life.

17 The defendant shall provide the probation officer  
18 access to any financial information upon request, and he shall  
19 participate in a mental health treatment program for  
20 evaluation and/or treatment services as necessary. If deemed  
21 necessary, the treatment will be arranged by the officer in  
22 consultation with the treatment provider; the modality,  
23 duration, and intensity of treatment will be based on the  
24 risks and needs identified. The defendant will be required to  
25 contribute to the cost of services rendered by means of

1 co-payment based on his ability to pay or the availability of  
2 third-party payments.

3           The defendant shall submit to a search of his person,  
4 property, house, residence, vehicles, papers, computers, other  
5 electronic communication or data storage devices or media to a  
6 search at any time, with or without a warrant, by the  
7 probation officer, and if necessary, with the assistance of  
8 any other law enforcement officer if there is reasonable  
9 suspicion of unlawful conduct or a violation of a condition of  
10 supervised release.

11           The probation -- the defendant shall warn any other  
12 residents within the premises that the property will be  
13 subject to search pursuant to this condition.

14           The defendant shall comply with the requirements of  
15 the Sex Offender Registry and Notification Act as directed by  
16 the probation officer, the Federal Bureau of Prisons, or any  
17 state, U.S. Territory or Indian tribe, sex offender  
18 registration agency where he resides, works, is a student,  
19 carries on a vacation, or is employed, or was convicted of a  
20 qualifying offense.

21           The defendant shall undergo a sex offense specific  
22 evaluation and/or will participate in a sex offender treatment  
23 or mental health treatment program arranged by the probation  
24 officer. And the treatment will be arranged by the probation  
25 officer in consultation with the treatment provider; the

1 modality, duration and intensity of treatment will be based on  
2 the risks and needs identified by the probation officer and  
3 the experts in the field.

4 The defendant shall abide by all rules, requirements  
5 and conditions of the sex offender treatment program,  
6 including submission to testing, such as polygraph and/or any  
7 other testing available at the time of release.

8 Defendant shall waive his right of confidentiality in  
9 any records for mental health assessment and treatment  
10 services and shall sign any necessary release required to  
11 obtain those records that are imposed as a consequence of the  
12 judgment that will allow the probation officer to review  
13 defendant's course of treatment and progress with the  
14 treatment provider.

15 The defendant shall be required to submit to an  
16 initial polygraph examination and subsequent maintenance  
17 testing intervals to be determined by the Probation Office to  
18 assist in treatment planning, in case monitoring and as a  
19 means to ensure that he's in compliance with the requirements  
20 of his supervision program.

21 So that's the object and scope. The defendant will  
22 be required to contribute to the cost of services rendered  
23 based on co-payment based on his ability to pay or third party  
24 payment.

25 The defendant has been given notice he has 14 days

1 from entry of judgment in order to appeal from the judgment of  
2 conviction and sentence.

3 And Mr. Gorman, let me say this. I have given you  
4 the benefit of a guideline sentence. And I could have  
5 construed reasons to go beyond that and given you a higher  
6 sentence.

7 Here you have complained about people who were  
8 stealing and not entitled to receive payment from you, but  
9 never reported those individuals. And you know what? You  
10 never paid your landlord. And you left the place in disarray  
11 even, with syringes and all that kind of stuff at the  
12 apartment you had and where you were living.

13 So I'm not taking that into consideration, and I have  
14 not taken it, but you have to understand that there's a -- the  
15 universal law of cause and effect. The way you behave towards  
16 others, others will start to behave. And contributing -- in  
17 the same fashion, you do well and you will receive well.

18 So this time you have received the benefit. I hope  
19 that you adjust and that you will comply with the conditions  
20 imposed. And remember the words of the government here. Next  
21 time around, probably the prosecutor won't be asking for the  
22 same type of penalties. You'll be facing harsher sentences,  
23 and God forbid, additional charges for any other conduct.

24 So anything else?

25 MR. HERNANDEZ GARCIA: Yes, Your Honor. Briefly, in



1 terms of designation, Your Honor, we would request that  
2 Mr. Gorman complete the remainder of his sentence at an  
3 institution in the New York City area. And that while at the  
4 institution, he receive mental treatment. And that the BOP  
5 comply with his kosher diet.

6 We request that, those Orders, Your Honor. Also, and  
7 finally, Your Honor, we would request an Order to probation  
8 regarding the potential address that we've informed earlier  
9 today.

10 THE COURT: What potential address?

11 MR. HERNANDEZ GARCIA: There's an address in New York  
12 City, with the purpose of seeing -- with the purpose of  
13 transfer of supervision, Your Honor. We provided an address,  
14 permanent address, the name of a person who lives at that  
15 address. We gave it to probation about a month ago.

16 We would request an Order that the Probation Office  
17 look into that address and this person to the extent that --

18 THE COURT: Well, let me put it this way, and take it  
19 by stages. The recommendation for designation is granted. If  
20 the Bureau of Prisons can locate him in an area of New York,  
21 no problem at all.

22 In terms of instructing the probation officer, that  
23 will have to be done, I understand, with whoever works the  
24 release plan in New York. I don't know to what extent  
25 probation here will be submitting the collaterals, but there's

1 a process for that.

2 So whatever the process is, I think probation knows  
3 defendant's intent, request for transfer of supervision. I  
4 don't know where now he has to place that, whether it's with  
5 the case manager at BOP --

6 PROBATION OFFICER: (Nodding head up and down.)

7 THE COURT: Okay. They are telling me yes here, so I  
8 suggest you discuss that with the probation officer here after  
9 the conclusion of the session, and the defendant be guided,  
10 given advice as to how to proceed.

11 MR. HERNANDEZ GARCIA: I have the same understanding  
12 as you in terms of internal procedures, Your Honor. Probation  
13 officer informed me back in September that an Order from Your  
14 Honor was required. That's why I'm making the request. So --  
15 but we will inform Mr. Gorman to --

16 THE COURT: Let me ask the probation officer, what is  
17 it that I have to Order now at this juncture?

18 PROBATION OFFICER: Well, Your Honor, I think that  
19 the attorney was requested in July or -- that we, for -- we  
20 could request a relocation at that time, and we told the  
21 attorney that we needed first to complete the revocation  
22 proceedings and we look into that as part of the relief stage.

23 So he was trying to push us in that direction, but at  
24 that time he wanted us to do something with the revocation.  
25 But we really had no -- the revocation proceeding was still

1 pending, so we still -- we needed to finalize this in order  
2 for us to know what route to go.

3 THE COURT: So as far as the concern, this is the way  
4 I see it. The defendant now goes to serve his sentence. At  
5 the time he's about to be released, he will be released to the  
6 district he was sentenced or where he lives, and then they  
7 work the plan. If supervision is transferred to New York, New  
8 York will ask a collateral from the Probation Office here.  
9 Then I will have to sign the paperwork. But the Judge out  
10 there has to accept before I sign those papers.

11 So once New York accepts, all they ask is for us to  
12 release him. I have no problem, but the procedures have to be  
13 followed. And the transfer does not materialize simply  
14 because I issue an Order. The supervising district has to  
15 accept. And they can decline.

16 MR. HERNANDEZ GARCIA: We understand, Your Honor.  
17 But given there is an address and the name right now, and  
18 given that he --

19 THE COURT: I cannot Order it. I cannot Order it,  
20 even if there is an address. He will have to provide that  
21 address to the person that is working his release plan at the  
22 Bureau of Prisons. That's what I'm saying. I cannot Order  
23 his relocation.

24 MR. HERNANDEZ GARCIA: We understand that. I will  
25 make it clear to him, Your Honor.

1 THE COURT: Okay.

2 MR. HERNANDEZ GARCIA: Your Honor, in regard to the  
3 mental treatment and the kosher diet, did you --

4 THE COURT: Well, the Bureau of Prisons is supposed  
5 to give every defendant the diet that is necessary. So to the  
6 extent he has a special diet, Bureau of Prisons is instructed  
7 to provide it to him, as well as the mental health evaluation  
8 and treatment if deemed necessary.

9 MR. HERNANDEZ GARCIA: Nothing further on our part,  
10 Your Honor. Thank you. Have a good day.

11 THE COURT: Very well. Court remains adjourned.

12 (At 2:46 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT )  
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 37 pages is  
5 a true and accurate transcription to the best of my ability of  
6 the proceedings in this case before the Honorable United  
7 States District Court Judge Aida M. Delgado Colon on October  
8 31, 2018.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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